



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC. CIVIL APPLICATION NO. 337 OF 2011**

**PETER N. KIRIGUA.....1<sup>ST</sup> APPLICANT**

**MARY KIRIGUA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**KIOGORA MUTAI & CO. ADVOCATES.....RESPONDENT**

**RULING**

1. Peter N. Kirigu and Mary Kirigua, the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively took out the Notice of Motion dated 20<sup>th</sup> September, 2018 in which they sought for the following orders interalia:

**(i) Spent.**

**(ii) THAT the firm of M/S ALBERT KAMUNDE & CO. ADVOCATES be and is hereby admitted to properly come on record for the applicants in the place of M/S MUEMA & CO. ADVOCATES.**

**(iii) Spent.**

**(iv) THAT this Honourable Court be pleased to review and/or set aside the orders made on 6<sup>th</sup> July, 2018 and order that the Certificate of Taxation dated 8<sup>th</sup> November, 2017 be vacated and/or set aside and the same be fixed for inter-parties' hearing.**

**(v) THAT the costs of the application be provided for.**

2. The applicants filed the affidavit of Peter N. Kirigua in support of the motion. The firm of Kiogora Mutai & Co. Advocates filed the replying affidavit of Ronald Khavagali to oppose the motion.

3. When the motion came up for interpartes hearing, this court made an order directing the parties to file and exchange written submissions.

4. I have considered the grounds stated on the face of the Motion and the facts deponed in both the supporting and the replying affidavits together with the rival submissions.

5. The first issue for determination concerns the change of advocates. The applicants are of the submission that the firm of P.K. Mutai & Co. Advocates which first represented them only entered appearance and thereafter ceased all court attendances and/or communications with them.

6. That the firm of Muema & Associates replaced the aforesaid firm of advocates vide a Notice of Change of Advocates filed in court on 18<sup>th</sup> April, 2018. The applicants aver that they now wish to have the firm of Albert Kamunde & Co. Advocates to come on record pursuant to Order 9, Rule 9 of the Civil Procedure Rules.

7. The respondent on the other hand is of the submission that the firm of P.K. Mutai & Co. Advocates never ceased acting for the applicants herein.

8. I have perused the record and it is apparent that there is no copy of a notice of change of advocates replacing the firm of P.K. Mutai & Co. Advocates with that of Muema & Associates. Similarly, it is not in dispute that the firm of advocates formerly mentioned never ceased acting. Under the circumstances, I am unable to confirm that a notice of change of advocates was previously filed.

9. Furthermore and in line with the provisions set out under **Order 9, Rule 9** of the Civil Procedure Rules, an application seeking to effect a court order for a change of advocates ought to be served upon all parties which must include the firm of advocates to be replaced. It appears this has not been done here.

10. In the premises, it remains unclear as to when the firm of Muema & Co. Advocates came on record. If at all there was a notice of change of advocates filed in that respect, the current application has not been served upon the former advocates to grant them the opportunity of either contesting or conceding to the same, thereby making it difficult to regularize the coming on record of the firm of Albert Kamunde & Co. Advocates. I therefore find no basis on which to grant the order sought.

11. The second prayer is for review and/or setting aside of this court's order made on 6<sup>th</sup> July, 2018. Having determined that the firm of Albert Kamunde & Co. Advocates cannot be deemed to be properly on record for the applicants, this court's takes the view that the Motion lacks merit.

12. The upshot is that the Motion is hereby dismissed with no order as to costs.

Dated, Signed and Delivered at Nairobi this 28<sup>th</sup> day of February, 2019.

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**J.K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicants

..... for the Respondent